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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/028,485	12/20/2001	Fredrik Winquist	45687-00085	2377
23932	7596	02/25/2004		EXAMINER
JENKENS & GILCHRIST, PC 1445 ROSS AVENUE SUITE 3200 DALLAS, TX 75202				OLSEN, KAJ K
			ART UNIT	PAPER NUMBER
			1753	

DATE MAILED: 02/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/028,485	WINQUIST ET AL.
	Examiner Kaj Olsen	Art Unit 1753

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.135(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the minimum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)  Responsive to communication(s) filed on \_\_\_\_.  
 2a)  This action is **FINAL**.      2b)  This action is non-final.  
 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)  Claim(s) 1-15 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.  
 5)  Claim(s) \_\_\_\_ is/are allowed.  
 6)  Claim(s) 1-4 and 11-15 is/are rejected.  
 7)  Claim(s) 5-10 is/are objected to.  
 8)  Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9)  The specification is objected to by the Examiner.  
 10)  The drawing(s) filed on \_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a)  All    b)  Some \* c)  None of:  
 1.  Certified copies of the priority documents have been received.  
 2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
 3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date 43023/10/02 and 7/31/03

4)  Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_  
 5)  Notice of Informal Patent Application (PTO-162)  
 6)  Other: \_\_\_\_

**DETAILED ACTION**

***Claim Objections***

1. Claims 5-10 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from another multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claims 5-10 not been further treated on the merits.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-4 and 11-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. In claims 1, 12 and 15, applicant's use of parenthetical text is confusing and unnecessary. Because the claims are constructed with "at least one working electrode" and open claim language (i.e. "comprising"), it is unnecessary for the applicant to simultaneously refer to the plural working electrode embodiments.

5. In claim 1 and 14 applicant does not utilize proper Markush language to identify the various elements to be chosen from. The examiner directs the applicant's attention to claim 15 which utilizes appropriate Markush language.

6. In claims 1, 11, 14 and 15, it is also unnecessary to specify "alloys thereof with other metals" because nothing about the earlier "alloys thereof" that specifically limits the alloy to

only materials from the preceding list (only that the alloy must contain one of the preceding elements).

7. Regarding claim 3, the term "preferably" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

8. In claims 4 and 15, it is unclear which electrodes applicant is referring to. Is applicant specifying that the working electrodes are made of differing materials or that the working and counter electrodes are different?

9. Claim 11 is confusing because it states the use of "one or more transition metals or an". Gold is a transition metal.

10. In claim 11, there is no antecedent basis for "said data matrix".

11. Claim 12 is confusing because applicant never specified in claim 11 a condition where there are plural electrodes rendering the parenthetical text (discussed earlier) confusing.

*Claim Rejections - 35 USC § 102*

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. Claims 1-4 and 11-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Winquist et al (Meas. Sci. Technol. 9 (1998) pp. 1937-1946).

14. With respect to the claims as best understood, Winquist discloses an electronic tongue based on voltammetry comprising a plurality of working electrodes and a counter electrode, where the working electrodes are made of materials including Rh (see section 3.2 of p. 1939). Although the tongue is not specified for the detection of ozone, that is only the intended use of the apparatus and the intended use need not be given further due consideration in determining patentability.
15. Figure 1 shows an embodiment having at least six working electrodes.
16. With respect to the use of different metals see the paragraph that bridges pp. 1943 and 1944.
17. With respect to the use of a programmable pulse generator, recording device, sampling device, memory, and processing unit, see figure 1 and section 2 of p. 1938 through section 4.2 to p. 1944.
18. With respect to the provision of electrodes on-line in a processing plant, that is only the intended use of the apparatus and the intended use need not be given further due consideration in determining patentability. Applicant does not appear to be claiming a processing plant.

*Information Disclosure Statement*

19. The examiner has crossed off one of the submitted WIPO documents because it doesn't appear to be related to anything in the instant invention, and it is unclear why the applicant has submitted it.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kaj Olsen whose telephone number is (571) 272-1344. The examiner can normally be reached on Monday through Thursday from 7:00 A.M. to 4:30 P.M. and on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nam Nguyen, can be reached on 571-272-1342. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kaj Olsen Ph.D.  
Primary Examiner  
AU 1753  
February 17, 2004